



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 4219-00
24 January 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability.
2. The Board, consisting of Messrs. Ensley, Mazza and Silberman, reviewed Petitioner's allegations of error and injustice on 19 January 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
 - c. Petitioner was evaluated by a medical board on 9 February 1999, because of lumbar radiculopathy and back pain refractory to surgical therapy, status post L4-5 laminectomy and discectomy. The back examination noted some breakaway weakness in the left leg due to pain, and he had a positive straight leg raise on the left at seven degrees. A patchy area of decreased sensation was noted in his left leg. Range of motion measurements were not recorded. Repeat MRI showed no evidence of recurrent disc herniation, but some scarring was noted along the nerve root. He described a severe burning pain in his low back with radiation to his left leg. The medical board concluded that his condition had worsened with time, but that he did not need further surgery. His prognosis was assessed as "Poor" for return to significant duty, or work involving significant bending or lifting. He was limited to

lifting no more than 20 pounds, and precluded from running or jumping. The Physical Evaluation Board (PEB) made preliminary findings that he was unfit for duty because of the back condition, which it rated at 20%. Petitioner rejected that finding and demanded a formal hearing; however, he changed his mind and withdrew his request, and he accepted the findings of the PEB. He was discharged with entitlement to disability severance pay on 11 June 1999, having completed 11 years, 8 months and 3 days of active service. He was examined at a Department of Veterans Affairs (VA) facility on 22 June 1999, and found to have "agonizing" and "excruciating" back pain, which began at 10 degrees of flexion, 5 degrees of extension, 10 degrees of lateral bending bilaterally, and 20 and 25 degrees of rotational motion to the left and right, respectively. On 29 November 1999, the VA rated his back condition at 60% under VA code 5293, for pronounced intervertebral disc syndrome with significant loss of range of motion. He underwent additional back surgery on 23 November 1999, consisting of a re-do hemilaminotomy, foraminotomy, and lysis of adhesions on the left at L4-5; and a right-sided hemilaminotomy, foraminotomy, and discectomy at L5-S1 on the right. On 31 July 2000, the VA granted him unemployability from 12 June 1999, and a 70% rating was added for a mood disorder related to his chronic back pain and failed surgeries.

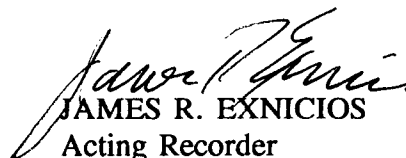
CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner was significantly more impaired by his back condition than indicated by the 20% rating he was assigned by the Navy. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

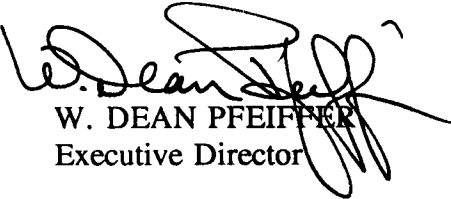
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was not discharged on 11 June 1999.
 - b. That Petitioner's naval record be further corrected to show that he was permanently retired by reason of physical disability on 11 June 1999, pursuant to 10 U.S. Code 1201, with a 40% rating under VA code 5299-5293.
 - c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director